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MICROSOFT CORPORATION
ONE MICROSOFT WAY
REDMOND, WA 98052

EXAMINER
HORNER, JONATHAN R

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte HAIM PERSKI

Appeal 2015-001850
Application 11/889,598[1]
Technology Center 2600

Before JEAN R. HOMERE, ST JOHN COURTENAY III, and SCOTT E. BAIN, *Administrative Patent Judges*.

HOMERE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134(a) of the Examiner's Final Rejection of claims 1–4, 6–8, 10–16, 20–31, 33–37, and 39–47. App. Br. 2. Claims 5, 9, 17, 32, and 38 have been canceled. *Id*. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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[1] Appellant identifies the real party in interest as N-trig Ltd. App. Br. 2. An Oral Hearing was held in this appeal on April 20, 2017.

Appellant's Invention

Appellant invented a gesture digitizer that switches from a standard detection mode to a gesture detection mode upon detecting that an input gesture provided by a user includes a body part and an inanimate object (i.e., stylus + finger touch). Spec. 2:17–31. Fig. 6. Subsequently, the detected input gesture is matched to a predefined event in a gesture database. *Id.*

Illustrative Claim

Independent claim 1 is illustrative, and reads as follows:

> 1. A method for detecting gestures with a digitizer, the method comprising:
>
> storing a database of pre-defined gestures, wherein the pre-defined gestures are defined to include one part input from a body part and another part input from an inanimate object;
>
> switching from a standard detection to gesture detection responsive to identifying any event that includes one part input from a body part and another part input from an inanimate object; and
>
> matching input from the event to a pre-defined gesture from the database of pre-defined gestures based on one part input being from the body part and another part input being from the inanimate object.

Prior Art Relied Upon

D'Amico et al.	US 5,956,020	Sept. 21, 1999
Perski et al.,	US 2003/0098858 A1	May. 29, 2003
Wu et al.,	US 2005/0052427 A1	Mar. 10, 2005

Rejections on Appeal

Claims 1–4, 6, 7, 10–16, 18, 20–31, 33–37, and 39–47 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Wu and D'Amico. Final Act. 4–17.

Claim 8 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Wu, D'Amico and Perski. Final Act. 17–18.

ANALYSIS

We consider Appellant's arguments *seriatim* as they are presented in the Appeal Brief, pages 6–17, and the Reply Brief, pages 1–3.[2] We have reviewed the Examiner's rejection in light of Appellant's arguments. We are unpersuaded by Appellant's contentions. Except as otherwise indicated hereinbelow, we adopt as our own the findings and reasons set forth in the Examiner's Answer in response to Appellant's Appeal Brief. Ans. 2–5, Final Act. 5–10. However, we highlight and address specific arguments and findings for emphasis as follows.

Regarding the rejection of claim 1, Appellant argues that the combination of Wu and D'Amico does not teach or suggest switching to the gesture mode responsive to receiving input from a body part and an inanimate object. App. Br. 6–7. In particular, Appellant argues D'Amico

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[2] Rather than reiterate the arguments of Appellant and the Examiner, we refer to the Appeal Brief (filed August 18, 2014), the Reply Brief (filed November 18, 2014), and the Answer (mailed September 19, 2014) for their respective details. We have considered in this Decision only those arguments Appellant actually raised in the Brief. Any other arguments Appellant could have made but chose not to make in the Brief are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2013).

discloses a programmed application running on a host computer *selecting* a Pen Only, a Finger Only mode, or a Pen/Finger mode, as opposed to *switching* to the gesture mode (from the standard mode) in response to detecting the user input. *Id.* at 14 (citing D'Amico 8:36–43). According to Appellant, because the mode selection in D'Amico is performed by the programmed application regardless of the input provided by the user, the source input has no effect on the selection of the mode. *Id.* Further, Appellant argues that there are no instances in D'Amico where both pen and finger contact is sent to the host computer or used together. That is, if the controller detects both pen and finger inputs, pen contact has higher priority. *Id* at 14–15. Additionally, Appellant argues that the Examiner's reliance upon Wu's disclosure to teach switching from a standard mode to a gesture mode is improper, because the switching provided in D'Amico is not comparable to Wu's. *Id.* at 15 (citing Wu ¶ 34). These arguments are not persuasive.

We note at the outset Appellant does not dispute the Examiner's finding that D'Amico discloses three modes including (1) Pen Only, (2) Finger Only, and (3) Pen and Finger together. App. Br. 15, Ans. 3–4. We agree with the Examiner that the Pen and Finger mode operates differently from the other two modes, and requires the presence of both pen and finger. Ans. 4. Although upon detecting of both Pen and Finger, the controller will give priority to the Pen to thereby send Pen coordinate data to the computer, we agree with the Examiner that the detection of both pen and finger inputs triggers the selection of the Pen and Finger mode, as opposed to the other two modes. *Id.* (citing D'Amico 11:25–29). Therefore, we find that the selection of the Pen and Finger mode teaches or suggests switching to the

gesture mode from the standard (Pen or Finger) mode. Further, we are not persuaded that Wu's mode switching system is incompatible with D'Amico's. As correctly noted by the Examiner, Wu discloses a digitizer for recognizing input gestures provided by a user by way of an inanimate object (e.g. stylus) or a body part (finger). Further, D'Amico discloses recognizing when both the stylus and the finger are input together to thereby switch to the Pen and Finger mode. We thus, agree with the Examiner that because both Wu and D'Amico are related to a digitizer recognizing user inputs, and that the proposed combination of Wu and D'Amico would predictably result in a digitizer that recognizes an input containing both an inanimate part and a body member, the proposed combination is proper. Ans. 4–8. Accordingly, we find the Examiner has established in this record sufficient rational underpinning to support the proposed combination.

For these reasons, we are not persuaded of error in the Examiner's rejection of claim 1 as being unpatentable over the combination of Wu and D'Amico. Accordingly, we sustain the Examiner's 35 U.S.C. § 103(a) rejection of independent claim 1.

Regarding the rejections of claims 2–4, 6–8, 10–16, 20–31, 33–37, and 39–47, Appellant has not presented separate patentability arguments or have reiterated substantially the same arguments as those previously discussed for patentability of claim 1 above, those claims fall therewith. *See* 37 C.F.R. § 41.37(c)(1)(vii).

DECISION

For the above reasons, we affirm the Examiner's rejections of claim 1–4, 6–8, 10–16, 20–31, 33–37, and 39–47.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED